

# JONES DAY

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OFFICE OF GENERAL  
COUNSEL

**July 30, 2014**

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VIA EMAIL & COURIER.

**Jeff S. Jordan, Esquire**  
**Assistant General Counsel**  
**Federal Election Commission**  
**999 E Street, NW**  
**Washington, DC 20463**

Re: MUR 6784, The Honorable Lizbeth Benacquisto

Dear Mr. Jordan:

This responds, on behalf of our client, The Honorable Lizbeth Benacquisto, to your questions regarding the above-captioned matter. As you are aware, we submitted a response to the complaint on behalf of Senator Benacquisto, along with Lizbeth Benacquisto for Congress and its treasurer, Nancy Watkins, on April 25, 2014 ("April 25 Response"). The Commission has since asked whether a response would be forthcoming from Senator Benacquisto's state senate committee in connection with MUR 6784.

Florida law requires candidates to establish and use a separate depository account for campaign activities, but does not utilize candidate political “committees” that exist as their own entity separate and apart from the candidate. To the extent that the complaint requires a response from the designated depository account from which Senator Benacquisto conducts activities for her state senate campaign, we have attached and hereby incorporate by reference the April 25 Response.


We add, however, that since the April 25 Response, the Commission considered MUR 6773 (Nestande), which resulted from allegations similar to those made in the complaint against our clients. At issue in MUR 6773 were allocations that California Assemblyman Brian Nestande—who, according to Commission documents, was not even a state candidate in the 2013-2014 cycle—made expenditures from his state campaign committees that supported his federal candidacy and further that he used a state campaign mailer as a tool to provide biographical and other information on his federal committee website. *See Factual & Legal Analysis, MUR 6773 (Nestande)*. The Commission unanimously voted to dismiss the matter and close the file.

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Jeff S. Jordan, Esquire  
July 30, 2014  
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**Please do not hesitate to contact us with any questions.**

Respectfully submitted,

  
William J. McGinley  
Ann M. Donaldson

**Enclosure**

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April 25, 2014

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**VIA EMAIL & FEDERAL EXPRESS**

Jeff S. Jordan, Esquire  
Supervisory Attorney  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
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Re: MUR 6784  
The Honorable Lizbeth Benacquisto  
Lizbeth Benacquisto for Congress  
and Nancy Watkins, as Treasurer

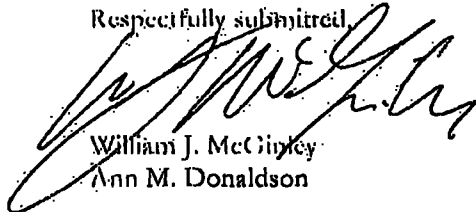
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COUNSEL

Dear Mr. Jordan:

Please find attached the response of our clients, The Honorable Lizbeth Benacquisto, Lizbeth Benacquisto for Congress, and Nancy Watkins, as Treasurer, to the notification from the Federal Election Commission that a complaint was filed against them in the above-referenced matter.

Please do not hesitate to contact us with any questions.

Respectfully submitted,



William J. McGinley  
Ann M. Donaldson

Attachment

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

The Honorable Lizbeth Benacquisto,  
Lizbeth Benacquisto for Congress,  
and Nancy Watkins, as Treasurer

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MUR 6784

RESPONSE OF THE HONORABLE LIZBETH BENACQUISTO, LIZBETH  
BENACQUISTO FOR CONGRESS, AND NANCY WATKINS, AS TREASURER,  
TO THE COMPLAINT

This responds on behalf of our clients, The Honorable Lizbeth Benacquisto, Lizbeth Benacquisto for Congress ("Federal Committee") and Nancy Watkins, as Treasurer (collectively, the "Respondents"), to the notification from the Federal Election Commission ("Commission") that a complaint was filed against them in the above-captioned matter. The Complainant evidently misunderstands and repeatedly misstates the law and makes accusations based on demonstrably false assumptions, and as such is legally deficient. For the reasons set forth here and as fully explained below, the complaint's allegations are without merit because:

- Lizbeth Benacquisto for Congress timely filed its Form 1 Statement of Organization well ahead of the deadline, based on Benacquisto's Statement of Candidacy filing and her meeting the \$5,000 threshold for becoming a candidate.
- Lizbeth Benacquisto for Congress paid fair market value for the assets it used, and reported the expenditures on its Pre-Primary FEC Report.
- The state senate advertisements cited in the complaint qualify for the state candidate exemption under the well-established test promulgated by the Commission, and furthermore the advertisements ran exclusively before Benacquisto had even become a federal candidate.

Accordingly, the Commission should find no reason to believe that Respondents violated the Federal Election Campaign Act of 1971 (the "Act"), or Commission regulations, dismiss the matter, close the file, and take no further action.

## FACTS

Lizbeth Benacquisto is a member of the Florida state senate, representing District 30. As an incumbent, Benacquisto qualified as a candidate for the 2014 state senate election by declaring her intention to run in December 2012 and submitting the requisite number of signatures, verified on November 13, 2013 and certified by the State on February 4, 2014.<sup>1</sup> She remains an active state senator and active state senate candidate for the 2014 state elections.<sup>2</sup> During the fourth quarter of 2013, Benacquisto's state senate campaign began ramping up its activities for the 2014 election including collecting signatures to qualify for the ballot and raising over \$113,000.<sup>3</sup> In January 2014, a Republican challenger filed his Statement of Candidate and Appointment of Campaign Treasurer forms with the Florida Division of Elections.<sup>4</sup>

In early 2014, from January 6 to February 2, Benacquisto ran television and radio advertisements touting her accomplishments as state senator.<sup>5</sup> No other individual, candidate, or officeholder was referenced in the advertisements. The advertisements did not reference any election save for a Lizbeth Benacquisto for State Senate logo and disclaimer statement indicating Benacquisto is "Republican for State Senate, District 30," and did not solicit funds for the committee. The advertisement included a disclaimer indicating that the state senate campaign paid for the advertisement. The audio of the television advertisement is transcribed below:

[Voiceover:] Lizbeth Benacquisto, southwest Florida's conservative voice...  
[Benacquisto:] In Florida, conservative values are getting us back on track—reducing spending to balance the budget and cutting taxes so you can keep more of the money you've earned. I fought to protect seniors and honor Florida's veterans—all while making sure the next generations have the tools they need to succeed.

<sup>1</sup> See Florida Division of Elections Documents, at Attachment A.

<sup>2</sup> See Florida Division of Elections candidate profile, at Attachment B.

<sup>3</sup> During the fourth quarter of 2013 through the first quarter of 2014, the state senate campaign reported making 47 different expenditures and collecting 305 contributions. See Florida Division of Elections Contribution and Expenditure reports.

<sup>4</sup> See Florida Division of Elections candidate profile: Thomas Mark LePine, at Attachment C.

<sup>5</sup> The advertisement is available at [https://www.youtube.com/watch?v=3uu\\_miWpObs](https://www.youtube.com/watch?v=3uu_miWpObs) and embedded in Benacquisto's state senate website.

[Voiceover:] Lizbeth has been recognized for her public service and her commitment to us. Lizbeth Benacquisto.

The radio advertisement ran as follows:

[Voiceover:] Lizbeth Benacquisto, a trusted conservative and our voice in the Florida Senate.

[Benacquisto:] In Florida, conservative values are getting us back on track, reducing spending to balance the budget, and cutting taxes so you can keep more of the money you've earned.

[Voiceover:] Lizbeth Benacquisto is committed to making government smaller, so families pay less, and small business owners can get people back to work. Lizbeth wants to ensure we fulfill the promises we've made to those whose courage and greatness built our nation.

[Benacquisto:] I've fought to protect seniors, and honor Florida's veterans, all while making sure the next generations have the tools they need to succeed.

[Voiceover:] Tools for success, like the best schools, cutting-edge technology and the most talented teachers. For our families and for our future, Lizbeth Benacquisto, a leader for southwest Florida. A leader we can trust. Paid by Lizbeth Benacquisto, Republican for Florida Senate, District 30.

On February 3, 2014, Benacquisto announced her candidacy for the April 22, 2014 Special Primary Election for the FL-19 Congressional seat.<sup>6</sup> On the same day, Benacquisto launched a website "lizbethforcongress.com"<sup>7</sup> and filed a Statement of Candidacy and Statement of Organization forming Lizbeth Benacquisto for Congress with the Federal Election Commission.<sup>8</sup> The campaign committee passed the \$5,000 contribution threshold on February 7, 2014 and made its first disbursement on February 10, 2014.<sup>9</sup>

The Federal Committee utilized certain images first used by the state senate campaign. The images are owned by vendor, Metcoric Media, which retained "ownership and all rights to the video footage and audio recordings . . . in perpetuity." See Metcoric Media Strategies Invoice to Lizbeth Benacquisto for State Senate (Dec. 5, 2013), available at Attachment D. Metcoric Media's invoice to the state senate campaign for production also indicates "Licensing the video footage and audio

<sup>6</sup> See Jenna Buzzacco-Foerster, Congress special election field lining up, Benacquisto in, Goss out, *Naples Daily News*, Feb. 3, 2014.

<sup>7</sup> Benacquisto's State Senate website remains active. See [votelizbeth.com](http://votelizbeth.com).

<sup>8</sup> Florida state law allows sitting state officeholders to run for federal office without resigning their office. See Fla. Stats. § 99.012.

<sup>9</sup> See 11 C.F.R. § 100.3(a); Benacquisto FEC Pre-Primary 2014 report.

recordings for broadcast use will incur additional fees and is solely at the discretion of Meteoric Media Strategies, LLC.” *Id.* As such, the Federal Committee licensed and paid for the images they used directly from Meteoric Media.<sup>10</sup>

### ANALYSIS

The complaint contains two allegations: that Benacquisto and the Federal Committee did not timely file with the Commission and that the Federal Committee received an improper transfer of assets from the state senate campaign. Both of these allegations is baseless and rooted in misstatements of law and false assumptions of fact, as demonstrated below.

1. Lizbeth Benacquisto filed as a candidate and registered her committee with the Commission on February 3, 2014, and passed the \$5,000 threshold on February 7, 2014. As such, she filed well ahead of the clear deadlines established by Commission regulations.

Federal election law is clear regarding when an individual becomes a federal candidate: only accepting contributions or making expenditures for federal office makes an individual a candidate for the purposes of Federal election law. Commission regulations indicate that an “individual becomes a candidate for Federal office” when the individual raises or spends an aggregate of \$5,000. 11 C.F.R. § 100.3(a). Once the individual has met that threshold, he or she is required to file an FEC Form 2 Statement of Candidacy within 15 days, naming a principal campaign committee. 11 C.F.R. § 101.1(a). Further, the “principal campaign committee shall file a Statement of Organization in accordance with 11 CFR 102.2 no later than 10 days after designation pursuant to 11 CFR 101.1.” 11 C.F.R. § 102.1(a).

Lizbeth Benacquisto announced her candidacy for federal office on February 3, 2014, the same day as she filed a Form 2 Statement of Candidacy for federal office designating Lizbeth

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<sup>10</sup> See Benacquisto FEC Pre-Primary 2014 report, Transactions D68-000501 and D69-000502; Meteoric Media Invoices (Feb. 3, 2014, and March 18, 2014) available at Attachment F.

Benacquisto for Congress as her principal campaign committee, and the same day as that committee filed a Form 1 Statement of Organization with the Federal Election Commission.<sup>11</sup> According to her Pre-Election report, the first contributions to the Federal Committee were made on February 3, 2014, with the Federal Committee crossing the \$5,000 threshold on February 7, 2014. No expenditures were made until February 10, 2014. Had Benacquisto and the Federal Committee not already filed, the deadline would have been to file Form 2 no later than February 22, 2014, with the Form 1 deadline ten days after filing of Form 2. But by then, she and the Federal Committee had already met their filing requirements.

The Complaint attempts to change the Commission's definition of "candidate" to somehow relate back to activities Benacquisto undertook to further her state senate candidacy. It is unclear exactly how the Complainant has constructed the timeline for registration in the complaint, except that it confuses the rule regarding "other political committees" with candidate committees, complains of expenditures related to Benacquisto's state candidacy and assets later re-sold to the Federal Campaign for fair market value, the Federal Committee's engagement of a vendor to develop a Congressional campaign website. None of these are relevant to the definition of candidate and, further, none of these is improper under Federal election law and Commission precedents.<sup>12</sup>

In fact, in MUR 6216 (Coakley for Senate), the Commission dismissed a complaint alleging that Coakley had impermissibly used her state committee to hire staff and consultants and conduct federal exploratory activity to "produce a 'quick launch' of her Senate campaign." Commissioners

<sup>11</sup> See Lizbeth Benacquisto for Congress, FEC Forms 1 and 2.

<sup>12</sup> Complainant also asserts that the Federal Committee filed to file under 11 C.F.R. § 102.1(d), which applies to "other political committees" and not principal campaign committees. Further, though Complainant attempts to assert that Benacquisto had somehow formed a private intention to run for Congress even before the sitting Congressman resigned or a special election was called; even if this were true, it would be utterly irrelevant. The only instance where an individual who has "decided to become a candidate" is relevant is in connection with expenditures for "testing the waters" activity, of which there was none for the Federal Committee. See 11 C.F.R. § 110.5; see also FEC Pre-Primary 2014 Report (reporting no contributions or expenditures prior to filing the Statements of Candidacy and Organization).



Petersen, Baucly, Hunter, McGahn, and Weintraub, Statement of Reasons, MUR 6216 (Coakley for Senate) [Hereinafter *Coakley SOR*] at 2. Specifically, Coakley's state committee used state funds to "buy a fundraising database, redesign her website, secure domain names, and purchase . . . yard signs, posters, buttons, lanyards and T-shirts featuring her campaign logo and then sold these assets to the Federal Committee . . . on the same day that Coakley announced her candidacy." *Id.* at 4. The Commission allowed this activity despite the fact that Coakley was running unopposed and the state race was fourteen months away, and in no way did the Commission suggest that the later purchase of assets would somehow make an individual a candidate before he or she met the \$5,000 threshold outlined in the regulations. Similarly, Benacquisto's actions as a state senate candidate cannot make her a federal candidate, even if the Federal Committee later purchases the assets used in the state campaign. As such, the Commission must find no reason to believe there has been a violation of FECA or the Commission's regulations, dismiss the complaint, and take no further action.

**2. No transfers of funds or assets occurred; the Federal Committee paid for Federal Committee activities and paid fair market value to the owner of assets used for both the state and federal campaign.**

The Complaint also alleges that the Federal Committee accepted improper transfers of funds or assets from the state senate campaign. But the Complaint's allegations have no basis in fact or law as explained below.

**A. The state senate campaign's expenditure for television and radio commercials did not constitute a transfer from the state senate campaign; indeed, it was an allowable expenditure of state funds "solely in connection with [an] election for State or local office."**

Complainant fails to allege that the television and radio commercials constituted any transfer of state funds or assets to the federal campaign, but does attempt to raise questions about its

permissibility under federal law.<sup>13</sup> Federal election law is clear that state funds shall not be used for election activity for federal candidates, but it is equally clear that individuals who are also state candidates and use state election funds "solely in connection with" their state campaign fall under a well-established exemption to this rule. *See* 2 U.S.C. § 441i(e)(2); 11 C.F.R. § 300.72. Though federal candidates who are also state candidates or officeholders often draw complaints for such activities, the Commission has been clear and consistent in applying a simple analysis based on 2 U.S.C. § 441i(e)(2) in such circumstances and dismissing complaints when the activities meet the prongs of the test. The analysis begins with whether the individual was a federal candidate "as a threshold matter;" *see* First General Counsel's Report, MURs 5387 & 5446 (Welch for Wisconsin) at 7, and then follows the statutory language asking (1) whether the individual is a candidate for State or local office; (2) whether the spending of funds is permitted under State law; and (3) whether the communication refers only to the State candidate or other state candidates and thus was "solely in connection with" the state office. If the analysis is met, the use of state funds is permissible. The advertisement meets each prong and thus is a permissible use of state funds.

- i. Benacquisto was not a federal candidate when the advertisements aired; thus the inquiry should end there.

The advertisements cited in the complaint ran from January 6 until February 2, 2014, before Benacquisto filed her Statement of Candidacy and before she crossed the \$5,000 threshold, which both occurred after February 2, 2014. As such, she was not a federal candidate at the time the advertisements ran. The Office of General Counsel ("OGC") has recognized, "for those disbursements, if any, that were made prior to [respondent] becoming a federal candidate, and those disbursements, if any, that were made after [respondent] became a federal candidate, but made to

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<sup>13</sup> Further, though the Complaint does not raise coordination as an issue, it is important to note that there is also no coordination issue here because since any communications paid for by Benacquisto's state senate account "were paid for by the candidate or [her] agents; and therefore, the payment prong is not satisfied." *See* First General Counsel's Report, MUR 6207 (DeSaulnier) at 13-14; *see also* AO 2009-26 (Coulson) at 7.

fulfill obligations incurred by [respondent] solely in connection with his state candidacy prior to becoming a federal candidate, the limitations on federal candidates found at 2 U.S.C. § 441i(c) do not apply." First General Counsel's Report, MURs 5387 & 5446 (Welch for Wisconsin) at 8. Since Benacquisto was not a federal candidate when the advertisements ran and disbursement occurred, there can be no violation of 2 U.S.C. § 441i(e) or 11 C.F.R. § 300.72.

ii. Benacquisto was and is an ongoing candidate for state office, and thus meets the first prong of the analysis.

The advertisements meet the first prong of the analysis — whether the federal candidate is also a candidate for state office — since Lizbeth Benacquisto was and continues to be a candidate for state senate in Florida. *See* Florida Dep't of Elections Status Page, Lizbeth Benacquisto, at Attachment B. Irrelevant to the analysis is whether Benacquisto has an opponent, *see Coakley* SOR at 2, or the timing of the communication in relation to the state election, *see* Commissioners Petersen, Pauerly, Hunter, McGahn, and Weintraub, Statement of Reasons, MUR 6207 (DeSaulnier) at 4 n.3 [hereinafter *DeSaulnier* SOR] ("As here, provided that the requirements of the Section 441i(e) exception are satisfied, the timing of a communication is immaterial to the application of the exception.").

iii. The expenditure was permitted under state law, and thus fulfills the second prong of the analysis.

The expenditure must be permitted under applicable state law to meet the second prong. There has been no allegation that the advertisement was made in contravention of any state law, and thus the second prong of the analysis is met.

iv. The expenditure refers only to the State candidate whose committee made the expenditure, Lizbeth Benacquisto, and no other candidates or the federal election and thus meets the third prong of the analysis, qualifying it as an expenditure that meets the exception for activity "solely in connection with" the state election.

The final prong asks whether the expenditure "refers only to that State or local candidate, to any other candidate for the same State or local office, or both," 2 U.S.C. § 441(c)(2); *see also*

DeSaulnier SOR at 3, and is "solely in connection with" the state election. See First General Counsel's Report, MUR 5411 (Winters) at 6.<sup>14</sup> The only candidate mentioned in the advertisements is Lizbeth Benacquisto, state senator, candidate for state office and the individual subject to 2 U.S.C. § 441i(e). See DeSaulnier SOR at 3 ("The legislative history, suggests that Congress intended only to prohibit references to those federal candidates who are 'on the ballot for the same election and are not their opponents for state office.'")

The final prong requires the expenditure to be "solely in connection" with a State election. The Commission considers and applies this requirement based on its plain language,<sup>15</sup> and in conjunction with whether any federal candidates are mentioned. See DeSaulnier SOR at 4, First General Counsel's Report, MUR 5411 (Winters) at 6. Since the advertisement features Benacquisto and positive information about her, does not mention a potential federal candidacy in any manner, makes no reference to Federal candidates or federal elections, and in fact features her state senate

<sup>14</sup> The Commission and OGC have sometimes treated this as one prong, see First General Counsel's Report, MUR 5411 (Winters), and at others has engaged in separate, yet somewhat attenuated, analyses for each.

<sup>15</sup> Under the federal judiciary's First Amendment jurisprudence, the Commission cannot engage in burden shifting by placing the Federal committee in the position of proving that the advertisement falls into the clearly applicable state candidate exception at 2 USC § 441i(e). Any analysis of the advertisement must begin from the standpoint that the website contains protected political speech and is not subject to regulation. See *FEC v. Wisconsin Right to Life (WRITL II)*, 127 S. Ct. 2652, 2674 (2007). The Commission bears the burden of proving that the advertisement runs afoul of § 441i(e), a burden it cannot carry based upon the facts indicating that the advertisement was "solely in connection with" a state election, and thus falls outside the ambit of federal election law. In fact, any doubt concerning whether the advertisement was "solely in connection with" a state election must be resolved in favor of a finding that the website qualifies for the opposition exception at § 102.14(b)(3). *WRITL II* at 2669 ("Where the First Amendment is implicated, the tie goes to the speaker, not the censor."); *id.* at 2667 ("In short, it must give the benefit of any doubt to protecting rather than stifling speech.").

In addition, the Commission cannot misconstrue the ad based on the timing or other circumstances surrounding the expenditure, but rather must evaluate it only based upon a plain review its content. The Commission cannot supply a meaning to words or phrases that is incompatible with the clear import of the actual words. Cf. *FEC v. Fungate*, 807 F.2d 857, 863-64 (9th Cir. 1987) ("context cannot supply a meaning that is incompatible with, or simply unrelated to, the clear import of the words"). Therefore, the OGC and Commission's analysis are cabined by the First Amendment, and as such, may not use any sort of imputed intent, effect, or other open-ended factors to characterize an ad clearly "solely in connection with" a state election as something else since such a characterization would not be supported by a four-corners analysis of the advertisement itself. See *Buckley* 404 U.S. 1, 43-44 (1976) (rejecting intent-and-effect test); *WRITL II* (reaffirming *Buckley* and declining to adopt an intent-based test); *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 284 (4th Cir. 2008) ("This sort of ad hoc, totality of the circumstances-based approach provides neither fair warning to speakers that their speech will be regulated nor sufficient direction to regulators as to what constitutes political speech.").

campaign logo, there can be no conclusion other than that the expenditure was solely in connection with a State election.<sup>16</sup>

The Commission, in dismissing a complaint concerning state activity by a concurrent state and federal candidate, adopted an OGC report that stated, "While [the communication] is generally complimentary to [respondent] and could be said to promote or support her as a State senator, it does not support or promote her Federal candidacy except in the sense that any mention of her name or any public communication stating she is a good person or a good State officeholder could arguably be supportive of her Federal candidacy. If such were the case, the State candidate exemption would be rendered meaningless." First General Counsel's Report, MUR 5411 (Winters) at 7. The same reasoning applies to this advertisement.

The Commission has also specifically rejected the argument that "proximity in time to the Federal election in comparison to the State election" has any effect on this prong of the analysis concluding that "the timing of a communication is immaterial to the application of this exception." See *DeSaulnier SOR* at 4 n.3 ("The pertinent legislative history does not indicate that Congress intended to impose a restriction on the timing of an expenditure or receipt of funds in connection with a State or local election as set forth in Section 441i(c). See, e.g., 148 Cong. Rec. S2096-02 (March 20, 2002)"); see also First General Counsel's Report, MUR 5411 (Winters) at 7 ("although the [communication] was distributed within close proximity to [respondent] becoming a Federal candidate and is generally supportive of [her], it was not in close proximity to the primary election."). The Commission has repeatedly stated "that the mere identification of an individual who is a Federal candidate does not, in itself, promote, support, attack or oppose that candidate." *DeSaulnier SOR* at 4 (citing AOs 2009-26, 2007-34, and 2003-25); see also First General Counsel's Report, MURs 5387 & 5446 (Welch for Wisconsin) at 11. Further, OGC has rejected a Complainant's argument "that the

<sup>16</sup> Once the exception applies, whether the activity was "in connection with an election" under § 441i(c)(1)(B) becomes irrelevant. See *DeSaulnier SOR* at 4 n.4.

advertisements promote [respondent's] federal candidacy by increasing [his] name recognition in parts of the state where he is not well known" by pointing out that "there is no precedent to support such a broad interpretation of "promotion" [sic] a federal candidate." First General Counsel's Report, MURs 5387 & 5446 (Welch for Wisconsin) at 10.

Accordingly, the Benacquisto advertisement clearly meets the requirements for the state candidate exception in 2 U.S.C. § 441j(e) and 11 C.F.R. § 300.72. The Commission has repeatedly dismissed complaints based on state election activities that meet this exception, and the Commission should likewise do so in this case.

**B. None of the other activities or expenditures listed constitutes an impermissible transfer or expenditure of state or federal funds.**

i. LizbethforCongress.com

The Complaint alleges an impermissible transfer of the website domain based on a series of suppositions and accusations not grounded in fact. The state senate campaign made no expenditures regarding the development of the Lizbeth for Congress website. The Federal Committee enlisted a vendor to secure, develop, and manage the website. Since the Federal Committee secured a vendor to provide such services and the state senate campaign had nothing to do with its development, there could be no transfer of assets from the state senate campaign to the Federal Committee with regard to the website; rather the asset was procured as a result of a regular business transaction between the Federal Committee and a vendor.

ii. Use of images previously used by the state senate campaign.

The Complaint alleges that an impermissible transfer of value occurred based on the fact that images used by the state senate campaign were later used by the Federal Committee. The Commission has recognized that federal committees may use the same assets as state committees —

including images, mailing lists, and other resources — so long as the Federal Committee pays the “usual and normal charge” for the use of such assets. *See* AO 1992-19. The Commission and OGC have also recognized that if the state committee was not the proper owner of the asset, the Federal Committee instead must pay the usual and normal charge for use of the asset from the proper owner. *See* First General Counsel’s Report, MUR 5964 (Schock for Congress) at 7; *see also* Commissioners Walther, Petersen, Bauerly, Hunter, and Weintraub, Statement of Reasons, MUR 5964 (Schock for Congress) (declining to find reason to believe in order to investigate the true ownership or exact fair market value of the asset).

Here, the Federal Committee paid the vendor who owns the images fair market value for use of such images by the Federal Committee. *See* Attachments D & E. As such, there was no transfer of any asset between the committees; rather, it was a business transaction made through the market.

iii. Lizbeth Benacquisto’s Facebook page.

The Complaint also alleges that an impermissible transfer of value occurred based on the revamping of Lizbeth Benacquisto’s Facebook page to promote her candidacy for Congress rather than her state senate campaign. But there is simply no Commission regulation, guidance, or precedent that would indicate that a Facebook profile is an asset that has value.<sup>17</sup> First, the Facebook profile is personal to Lizbeth Benacquisto herself, its title and setup is not specific to any one campaign. Second, Facebook is a free internet service. Like a free internet webpage or blog, there is no cost for this service and thus no value to the page itself. *Cf.* Internet Communications E&J, 71 Fed. Reg 18589 (Apr. 12, 2006). In addition, unlike a mailing or email list, there is no

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<sup>17</sup> The Commission must not use the enforcement action to make new rules concerning these activities. The proper vehicle is to initiate a rulemaking that satisfies the Administrative Procedure Act’s notice and comment requirements. To do otherwise would violate Respondent’s Due Process rights and the principles of fundamental fairness and interpret the regulation in a manner that makes it vulnerable to a constitutional challenge. *See* FCC v. Fox, 132 S. Ct. 2307, 2317–2319 (2012); *see also* Arizona v. Inter Tribal Council of Arizona, Inc., 133 S. Ct. 2247, 2259 (2013) (“we think that—by analogy to the rule of statutory interpretation that avoids questionable constitutionality—validly conferred discretionary executive authority is properly exercised . . . to avoid serious constitutional doubt.”).

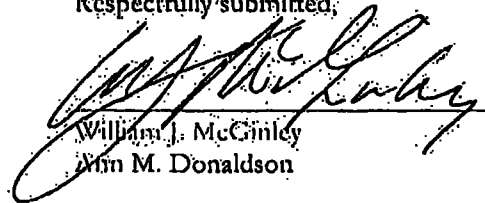
extrinsic value to any Facebook "followers," "friends," or "likes" since user information cannot be harvested or ported for distribution according to Facebook's Terms of Use and because Facebook controls the distribution of posts to any given Facebook profile according to a proprietary set of algorithms and other considerations. Unlike a mailing list or even an email list, Facebook "followers" cannot be bought and sold and just because something is posted on a Facebook profile does not "distribute" it to its followers. As such, there was no improper transfer of value related to the Facebook profile page.

### CONCLUSION

For all of the reasons stated above, there is no factual or legal basis for finding reason to believe a violation occurred in this matter. *See* Commissioners Wold, Mason, Thomas, Statement of Reasons, MUR 4850 ("A mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents. . . . The burden of proof does not shift to a respondent merely because a complaint is filed."); Commissioners Mason, Sandstrom, McDonald, Smith, Thomas, Wold, Statement of Reasons, MUR 5141 ("A complainant's unwarranted legal conclusions from asserted facts, will not be accepted as true."). Also, the complaint's speculative accusations are not a sufficient basis for finding reason to believe --- especially in light of the evidence included with this reply. Commissioners Mason, Sandstrom, Smith, Thomas, Statement of Reasons, MUR 4972 ("Mere speculation will not support an RTB finding."); Commissioners Mason, Sandstrom, Smith, Thomas, Statement of Reasons, MUR 4960 ("Such purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred."). We respectfully request that the Commission dismiss the complaint, close the file, and take no further action in this matter.



Respectfully submitted,



William J. McKinley  
Ann M. Donaldson

PATTON BOGGS LLP  
2550 M Street, NW  
Washington, DC 20037  
P: (202) 457-6000  
F: (202) 457-6315

April 25, 2014



**STATEMENT OF  
CANDIDATE**

(Section 106.023, F.S.)

(Please print or type)

RECEIVED  
DEPARTMENT OF STATE  
OFFICE USE ONLY  
2012 DEC -4 AM 9:56  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

I, Lizbeth Benacquisto

candidate for the office of Florida Senate, District 30 ;

have been provided access to read and understand the requirements of  
Chapter 106, Florida Statutes.

X Lizbeth Benacquisto  
Signature of Candidate

11/13/12  
Date

Each candidate must file a statement with the qualifying officer within 10 days after the Appointment of Campaign Treasurer and Designation of Campaign Depository is filed. Willful failure to file this form is a first degree misdemeanor and a civil violation of the Campaign Financing Act which may result in a fine of up to \$1,000. (ss. 106.19(1)(c), 106.265(1), Florida Statutes).



## FLORIDA DEPARTMENT OF STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

December 5, 2012

The Honorable Lizbeth Benacquisto  
Post Office Box 60543  
Fort Myers, Florida 33906-0543

Dear Senator Benacquisto:

This will acknowledge receipt of the Appointment of Campaign Treasurer and Designation of Campaign Depository for the office of State Senator, along with your Candidate Oath which was placed on file in our office on December 4, 2012. Your name has been placed on the 2014 active candidate list. However, a new Candidate Oath must be filed during the qualifying period along with the other qualifying documents.

### Campaign Treasurer's Reports

Your first campaign treasurer's report will be due on **January 10, 2013**. The report will cover the period of October 1, 2012 - December 31, 2012. All candidates who file reports with the Division of Elections are required to file by means of the Division's electronic filing system (EFS).

### Credentials and Sign-ons

Below is the web address to access the EFS and your user identification number. The enclosed sealed envelope contains your initial password. Once you have logged in using the initial password, you will be immediately prompted to change it to a confidential sign-on. You, your campaign treasurer, and deputy treasurers are responsible for protecting this password from disclosure and are responsible for all filings using these credentials, unless the Division is notified that your credentials have been compromised.

EFS Web site Address: <https://efs.dos.state.fl.us>  
Identification Number: 60136



R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250  
Telephone: (850) 245-6240 • Facsimile: (850) 245-6259 [www.dos.state.fl.us](http://www.dos.state.fl.us)  
Commemorating 500 years of Florida history [www.fl500.com](http://www.fl500.com)



The Honorable Lizbeth Benacquisto  
December 5, 2012  
Page Two

### Pin Numbers

Pin numbers are confidential secure credentials that allow you to submit reports and update personal information. The enclosed sealed envelope contains a confidential pin number for you.

Each candidate is required to provide the Division of Elections with confidential personal information that may be used to allow access in the event this password is forgotten or lost. When you enter the campaign account screen, there will be a drop down box where you pick a question (such as *What is your mother's maiden name?*) and supply an answer. All passwords and answers to questions are stored as encrypted data and cannot be viewed by Division staff and given out over the phone. Please notify the Division if your credentials have been compromised.

### Timely Filing

All reports filed must be completed and filed through the EFS no later than midnight, Eastern Standard Time, of the due date. Reports not filed by midnight of the due date are late filed and subject to the penalties in Section 106.07(8), Florida Statutes. In the event that the EFS is inoperable on the due date, the report will be accepted as timely filed if filed no later than midnight of the first business day the EFS becomes operable. No fine will be levied during the period the EFS was inoperable.

Any candidate failing to file a report on the designated due date shall be subject to a fine of \$50 per day for the first 3 days late and, thereafter, \$500 per day for each late day, not to exceed 25% of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, for reports immediately preceding each primary and general election, the fine shall be \$500 per day for each late day, not to exceed 25% of the total receipts or expenditures, whichever is greater, for the period covered by the late report.

### Electronic Receipts

The person submitting the report on the EFS will be issued an electronic receipt indicating and verifying the report was filed. Each campaign treasurer's report filed by means of the EFS is considered to be under oath by the candidate and campaign treasurer and such persons are subject to the provisions of Section 106.07(5), Florida Statutes.

The Honorable Lizbeth Benacquisto  
December 5, 2012  
Page Three

**Instructions and Assistance**

An online instruction guide is available to you on the EFS to assist with navigation, data entry, and submission of reports. The Division of Elections will also provide assistance to all users by contacting the EFS Help Desk at (850) 245-6280.

All of the Division's publications and reporting forms are available on the Division of Elections' web site at <http://elections.myflorida.com>. It is your responsibility to read, understand, and follow the requirements of Florida's election laws. Therefore, please print a copy of the following documents: Chapters 104 and 106, Florida Statutes, *2012 Candidate and Campaign Treasurer Handbook*, 2012 Calendar of Reporting Dates, and Rule 1S-2.017, Florida Administrative Code.

Please let me know if you need additional information.

Sincerely,



Kristi Reid Bronson, Chief  
Bureau of Election Records

KRB/ddb

Enclosures

pc: Mr. Gary Splain, Deputy Treasurer

**Florida Department of State**

Room 316, R.A. Gray Building  
500 South Bronough Street  
Tallahassee, FL 32399-0250  
(850)245-8200

**Division of Elections**

*Candidate's Petition Signatures*

**2014 General Election**

**State Senator**  
District 30

**Lizbeth Benacquisto**

**Republican**  
Incumbent

Total Required	Total Verified
3,077	3,195

County	Last Verified Date	Total Verified Number
Lee	11/13/2013	3,195



## FLORIDA DEPARTMENT of STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

February 5, 2014

Lizbeth Benacquisto  
Candidate for State Senate (60136)  
Post Office Box 60543  
Fort Myers, Florida 33906-0543

Dear Senator Benacquisto:

The supervisors of elections have certified to our office that you have obtained the required number of valid signatures on your candidate petitions for the office of State Senator, District 30. This certification excuses you from paying the qualifying fee and any party assessment when seeking to qualify for this office.

However, please note that when you dispose of surplus campaign funds, you must comply with Section 106.141(6), Florida Statutes, which provides:

Any candidate who filed an oath stating that he or she was unable to pay the fee for verification of petition signatures without imposing an undue burden on his or her personal resources or on resources otherwise available to him or her shall reimburse the state or local government entity, whichever is applicable, for such waived fee. If there are insufficient funds in the account to pay the full amount of the fee, the remaining funds shall be disbursed in the above manner until no funds remain. All funds disbursed pursuant to this subsection shall be remitted to the qualifying officer.

If you need additional information, please contact the Division at (850) 245-6280.

Sincerely,

Kristi Reid Bronson, Chief  
Bureau of Election Records

KRB/mcc



Division of Elections  
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399  
850.245.6200 • 850.245.6217 (Fax) [election.dos.state.fl.us](http://election.dos.state.fl.us)  
Promoting Florida's History and Culture [VivaFlorida.org](http://VivaFlorida.org)





**B**

1984-1985

**Florida Department of State**

Room 316, R.A. Gray Building  
500 South Bronough Street  
Tallahassee, FL 32399-0250  
(850)245-6200

**Division of Elections**

***Candidate Tracking System***

**2014 General Election**

**State Senator**  
**District 30**

**Lizbeth Benacquilto**  
**Republican**  
**Incumbent**

**Address**

PO Box 60543  
Ft Myers, FL 33906

**Campaign Treasurer**

Lizbeth Benacquilto  
PO Box 60543  
Ft Myers, FL 33906-0543

**Phone:** (561)602-1500

**Status:** Active

**Date Filed:** 12/04/2012

**Date Qualified:**

**Method:** Made ballot position by petition  
method

**Campaign Finance Activity**

**Campaign Documents**

**Petition Signatures**



**Florida Department of State**

Room 316, R.A. Gray Building  
500 South Bronough Street  
Tallahassee, FL 32399-0250  
(850)245-6200

**Division of Elections**

***Candidate Tracking System***

**2014 General Election**

**State Senator**  
**District 30**

**Thomas Mark LePine**  
**Republican**

**Address**

1747 Inlet Drive  
Fort Myers, FL 33903

**Campaign Treasurer**

Carrie LePine  
1747 Inlet Drive  
Fort Myers, FL 33903-

**Phone:** (239)599-4771

**Status:** Active

**Date Filed:** 01/06/2014

**Date Qualified:**

**Method:**

**Campaign Finance Activity**

**Campaign Documents**

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